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Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER AND E. W. HOLBROOK,

Petitioners,

vs.

W. L. GAZZAM,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petitioners, Building Service Employees' International Union, Local 262, Sam Nance, William Morganson, Charles Meyer and E. W. Holbrook, respectfully petition this Honorable Court for a writ of certiorari to the Supreme Court of the State of Washington.

Summary Statement of the Matter Involved.

The Union, one of the petitioners herein, which represents the interests of hotel employees, sought to persuade the respondent, a hotel owner, to sign a collective bargaining agreement that would regulate the working conditions of his employees and require them to join the union. The

respondent declared that his answer would depend upon the action of his employees (Rec. 54). Upon the insistence of the Central Labor Council of Bremerton, he arranged a meeting between the Union representatives and his employees. The meeting which was presided over by respondent's hotel manager and attended by eleven employees ended in a refusal of nine employees to join the Union (Rec. 85). When the respondent, thereupon, failed to sign a collective bargaining agreement, the Union began to peacefully picket his hotel (Rec. 57). At the same time he was placed by the Central Labor Council on the "We do not patronize" list (Rec. 75, 166). Later on, the Union modified its proposal and submitted another proposed agreement to the respondent, stating that regular employees working at that time should not be required to become members of the Union and that only new employees should join the Union (Rec. 14, 74, 77, 110-111). Since the respondent's attitude remained unchanged, the peaceful picketing continued.

The respondent filed suit against the petitioners, asking for an injunction and for the recovery of damages caused to him by the picketing and the being placed on the "We do not patronize" list (Rec. 30, 34). After the respondent had introduced his evidence, the trial court granted a motion for nonsuit, and dismissed the complaint (Rec. 11). Upon appeal to the State Supreme Court of Washington, that Court with four dissents and one partial concurrence, reversed the lower court's decision, (Rec. 12-25), basing its ruling solely upon the legality of the picketing involved and stating that peaceful picketing, in the absence of a direct employer-employee relationship, was unlawful, since it was designed to coerce the employer to request his employees to join the union. The Court reached this decision by referring to the public policy statement of the Washington

Labor Disputes Act (Rem. Rev. Stat. (Sup.) § 7612-2), and to the rules of common law as announced by the courts of the State of Washington (Rec. 24). In the same opinion, the Court expressly overruled two previous decisions rendered by it (*O'Neil* v. *Building Service Employees International Union, Local No. 6,* 1941, 9 Wash. 2d 507, 115 P. 2d 662, 137 A.L.R. 1102; and *S and W Fine Foods, Inc.* v. *Retail Delivery Drivers Union, Local No. 353,* 1941, 11 Wash. 2d 262, 118 P. 2d 962), which had declared, in accordance with the case of *American Federation of Labor* v. *Swing,* 312 U.S. 321, 61 S. Ct. 568, 85 L. Ed. 855 (1941), that peaceful picketing, even in the absence of a direct employer-employee relationship, was protected by the right of freedom of speech, regardless of the common law of a state or the phraseology of a state anti-injunction act and its interpretation by the state courts, and that the state courts were under a duty to follow the decisions of the United States Supreme Court in the interpretation of the Federal Constitution.

After the remanding of the case to the trial court, the issues were tried again and a judgment was rendered by the trial court allowing the amount of $500 as damages caused by the picketing, but not permitting any damages for placing respondent's name on the "We do not patronize" list (Rec. 38-39, 172). Upon subsequent appeal of both parties to the State Supreme Court, the judgment of the trial court was affirmed, due to the lack of a majority for any one of several propositions (Rec. 40), the Supreme Court of Washington making the following statement:

> "The members of this court have been unable to agree. Four judges were of the view that the judgment should be modified to the extent of allowing appellant Gazzam recovery of damages occasioned by picketing and by being placed on the unfair list. Three

judges were of the opinion that recovery should only be allowed for damages occasioned by the picketing, and two judges were of the opinion that no damages should be allowed either for picketing or placing on the unfair list."

It should be noted that on retrial the trial court found that: "The picketing was at all times peaceful, the record disclosing no evidence whatsoever of violence or threats of violence" (Rec. 144), and this statement is at no place denied. The respondent testified that there was but one picket; that the picket did not come on quite a number of days; that sometimes he was there from two to four hours, and several times for eight hours (Rec. 57). On the second trial, the court held that laundry damage charged by respondent was a very minor loss in no way connected with picketing; took the position that the state Supreme Court had denied any right to damages because the hotel had been placed on the unfair list; and allowed a $500.00 judgment "for any damage on account of the picketing" (Rec. 172). The judgment of the trial court was affirmed by the state Supreme Court with respect to $500.00 "as damages occasioned by the picketing", (Rec. 40). This case, therefore, relates only to peaceful picketing, and the final judgment is specifically so restricted, (Rec. 40), with an exclusion of all other issues by disagreement among the judges.

Since the State Supreme Court dealt with the aspect of picketing only, this case must be judged from that angle alone. Thus, the issues are narrowed to the problem whether picketing, admittedly peaceful, and carried on by workmen engaged in the same industry as the employer, for the purpose of enlarging the membership of their union, is protected by the right of freedom of speech, or whether a state court may disregard the constitutional guarantees involved in such a case and declare peaceful picketing un-

lawful and coercive, simply because of the absence of a direct employer-employee relationship, and of the fact that the picketing proves annoying to the employer and results in some financial loss to his business.

This Court has held that "peaceful picketing is the workingman's means of communication" (*Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U. S. 287, 293, 61 S. Ct. 552, 85 L. Ed. 836, 132 A.L.R. 1200); that "in the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution" (*Thornhill* v. *State of Alabama*, 310 U. S. 88, 102, 60 S. Ct. 736, 84 L. Ed. 1093, 1102); that "the scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state", and that a state "cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him". (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 326, 61 S. Ct. 568, 85 L. Ed. 855, 857). This Court has also declared that a state may not defeat the constitutional freedoms "by insubstantial findings of fact screening reality" (*Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U. S. 287, 293, 61 S. Ct. 552, 85 L. Ed. 836, 841, 132 A.L.R. 1200), and that "one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive." (*Bakery and Pastry Drivers & Helpers Local 802 of I. B. T.* v. *Wohl*, 315

U. S. 769, 774, 62 S. Ct. 816, 86 L. Ed. 1178, 1183). Although this Court recognized that even peaceful picketing may be restricted in certain narrowly defined situations, as for instance, in cases where it is conducted en masse (*Thornhill* v. *State of Alabama*, 310 U. S. 88, 105, 60 S. Ct. 736, 84 L. Ed. 1093, 1104) or enmeshed with violence (*Milk Wagon Drivers* v. *Meadowmoor*, 312 U. S. 287, 61 S. Ct. 552, 85 L. Ed. 836) or carried out as a means to perpetrate a criminal act in violation of a penal statute (*Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490, 93 L. Ed. 649), it has consistently stated that peaceful picketing, being a means of communication and persuasion, may not be proscribed in such a vague and general manner as to "exclude working men in a particular industry from putting their case to the public in a peaceful way." (*Cafeteria Employees Union, Local 302* v. *Angelos*, 320 U. S. 293, 296, 64 S. Ct. 126, 88 L. Ed. 58, 60.) This Court has also declared "that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute", and that "abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises", but "that the danger of injury to an industrial concern is neither so serious nor so imminent as to justify" a "sweeping proscription of freedom of discussion." (*Thornhill* v. *State of Alabama*, 310 U. S. 88, 104, 105, 60 S. Ct. 736, 84 L. Ed. 1093, 1103, 1104.)

Since the grounds of the State Court's decision in the present case are so broad that they could "be applied to ban all truthful publications of the facts of a labor controversy" (*Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490, 93 L. Ed. 649, 654), they are obviously, in this and in other respects, in conflict with the interpretation of the

right of freedom of speech as established by this Court, and cannot be justified. Gregory and Katz, in their book on Labor Law, (Charlottesville, Va., 1948), p. 334, say as to the present case that "it is hard to believe that this decision, if it were taken up to the United States Supreme Court on constitutional grounds under the Thornhill Doctrine, would not be reversed."

This Court Has Jurisdiction.

Jurisdiction of this Court is invoked under Section 1257 (3) of the Judicial Code (28 U.S.C.A., Section 1257 (3)), with respect to a judgment rendered by the highest court of the state in which a decision could be had.

There are special and important reasons for the granting of review on writ of certiorari. (Supreme Court Rule 38, par. 5.)

Rehearing was denied in this case and judgment entered by the Supreme Court of the State of Washington on August 12, 1949 (Rec. 41).

As is specifically indicated in the brief attached hereto, the enforcement of the judgment is stayed by action of the Chief Justice of the court rendering the judgment in compliance with Section 2101 (e) of Title 28, United States Code.

The jurisdiction over the matter at hand is clear since freedom of speech was made the decisive issue in proceedings before the state courts, the State Supreme Court declaring in its opinion as follows (Rec. 15):

> "Respondents maintain that picketing by a union which does not include within its membership any employees is legal. They base their contention upon the right of free speech as guaranteed by the constitution of the United States. Amendment 1."

Thus, it is clearly within the province of this Court, as the final arbiter in all questions involving the Federal Constitution, to determine, whether the right of freedom of speech protected the activities of the petitioners.

The Questions Presented.

The only issue involved in the present case is the interrelation between peaceful picketing and freedom of speech. This issue may be broken down into the following questions:

1. May peaceful picketing be outlawed by statute or court decision of a state, simply because the picketing is carried out by workmen who do not stand in a direct employer-employee relationship to the picketed employer, and may workmen in a particular industry thus be prevented from submitting their case to the public in a peaceful way?

2. May a state declare peaceful picketing coercive merely because of the absence of a direct employer-employee relationship and thus "exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him"?

3. May a state Court effectively disregard the constitutional guarantee of free speech by making "insubstantial findings of fact screening reality" and use these findings to declare conduct unlawful which otherwise and in previous decisions by the same court was held and deemed to be lawful and protected by the Fourteenth Amendment to the Constitution of the United States?

4. May a state outlaw peaceful picketing because it "has the potentiality of inducing action in the interests" of the union rather than the employer, and "may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute"?

Reasons Relied Upon for Allowance of Writ.

1. The Supreme Court of the State of Washington erred in declaring peaceful picketing unlawful merely because of the absence of a direct employer-employee relationship, since this Court, which is the final arbiter in all questions involving the Federal Constitution, has decided in the case of *American Federation of Labor* v. *Swing*, 312 U. S. 321, that "a state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him," and since the State Court was bound to follow that decision. (Article VI of the United States Constitution.)

2. The Supreme Court of the State of Washington erred in declaring peaceful picketing coercive, when it is in fact carried out without coercion or violence by persons other than those directly employed by the picketed employer. The fact of eventual annoyance to the employer created by such picketing, and the fact that such picketing may induce action in favor of the union rather than the employer, are not sufficient reasons, and do not entail such a clear and present danger to the public interest, as to authorize a state court to disregard the constitutional guarantee of free speech protecting such picketing.

3. The Supreme Court of the State of Washington erred in declaring the peaceful picketing involved in this case coercive by stating that it was designed to compel the employer to request his men to join the Union, since, by the Court's own statement of facts (Rec. 14), the Union had modified its original proposal and requested merely that new employees, hired to replace regular employees having

left the employ, should become union members. Thus, there was no factual basis for the State Court's finding of "coercion", even if there were coercion (which there was not) in the original picketing which involved all existing employees.

4. The Supreme Court of the State of Washington erred in declaring the peaceful picketing involved in this case coercive, since, according to the respondent's own statement, there was but one picket who did not appear at all "on quite a number of days" and who often remained from only two to four hours, when he appeared (Rec. 57). Thus, the obvious purpose of the picketing was the informing of the public of the fact of a labor dispute.

Respectfully submitted,

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Of Counsel.

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER AND E. W. HOLBROOK,

Petitioners,

vs.

W. L. GAZZAM,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The Opinions Below.

The opinion of the Supreme Court of the State of Washington, reversing the trial court's judgment of dismissal of the action, and remanding the case to the trial court for further proceedings, was rendered on December 22, 1947, with four dissents, and is reported in 29 Wash. 2d 488, 188 Pac. 2d 97. It appears on pages 12-25 of the Transcript of Record.

The final opinion of the State Supreme Court, merely adhering to the prior opinion, and affirming the trial court's decision without discussion but with dissents, was rendered on July 1, 1949, and judgment was entered on August 12, 1949. They appear at pages 40-41 of the Transcript of Record.

Jurisdiction.

The opinion of the Supreme Court of the State of Washington decides questions which have an important bearing upon the right of freedom of speech as interpreted by this Court. The opinion of the State Supreme Court deals expressly with the right of freedom of speech in its relation to peaceful picketing, and denies a privilege which has been held to exist by this Court. Thus, an important question concerning the Fourteenth Amendment to the United States Constitution is raised, and jurisdiction is invoked under Section 1257 of the Judicial Code.

A petition for rehearing in this case was denied, and judgment was entered by the Supreme Court of the State of Washington on August 12, 1949 (Rec. 41).

On August 15, 1949, the Chief Justice of the Supreme Court of the State of Washington (the state court of last resort) entered an order staying execution and enforcement of the judgment for a period of sixty days, and fixing the amount of supersedeas and cost bond as a basis for petitioning for a writ of certiorari from this Court. The required supersedeas and cost bond was filed and approved by such Chief Justice on the same day (Rec. 175).

On September 29, 1949, the Chief Justice of the State Supreme Court entered an order extending the stay of execution and enforcement of the judgment until final action on the petition for certiorari has been taken by this Court.

Statement of the Case.

The facts of this case are simple and not in dispute.

The respondent is the owner of the Enetai Inn, a hotel situated in the city of Bremerton, Washington. During

the time when the events, which gave rise to this case, took place, the respondent employed about fifteen persons for the purpose of running the hotel (Rec. 52). None of these employees belonged to the petitioning Union which organized and represented other hotel employees in their collective bargaining dealings with the respective employers (Rec. 53).

Just prior to May 1, 1946, the petitioners William Morganson and Charles Mayer, as representatives of the Union involved in this case, asked the respondent if he was agreeable to making a contract with the Union (Rec. 53-54). At that time the requested contract would have required all of the employees to join the Union (Rec. 74). The respondent replied that his answer would depend upon the action of his employees (Rec. 54). Giving the union representatives permission to talk with his employees, he went to Los Angeles for a short visit, and after his return was again approached by the Union to sign a contract, and again he answered that the decision was up to his employees (Rec. 54).

On May 2, 1946, the respondent received a letter from the Central Labor Council of Bremerton which stated that the petitioning Union had requested the Labor Council to place the respondent's hotel on the "we do not patronize" list, and that it was the policy of the Council before doing so, to call a meeting of both parties so as to give them opportunity to arrive at a settlement. The letter named the date and hour of the proposed meeting (Rec. 55; 157). The respondent's attorney attended that meeting, and, at the request of the Union, a meeting was arranged on May 10, 1946, between the Union and the respondent's employees (Rec. 56). This meeting, which was held under the chairmanship of the hotel's manager, was attended by

eleven employees. At the end of the meeting nine of the eleven employees indicated in a vote, proposed by the manager, that they did not desire to join the Union (Rec. 84-85). When no action with respect to a contract was forthcoming from the respondent, the Central Labor Council notified the respondent that his hotel was placed on the "We do not patronize" list (Rec. 75; 166). Afterwards (May 31, 1946), the Union began to peacefully picket, at irregular intervals, the respondent's place of business, and continued thus until July 20, 1946 (Rec. 57; 102). Shortly after June 22, 1946 (Rec. 74; 110), the Union submitted a new proposal to the respondent, dropping the condition that existing employees must join the Union and requesting only that new employees should become union members within fifteen days after they were hired. The proposal which is quoted in the opinion of the State Supreme Court, reads as follows (Rec. 14):

> "It is agreed by both parties hereto that the regular employees now working at the hotel shall not as a condition of continued employment be required to become members of the union. It is further agreed that any new employees who are hired to replace regular employees who have left through normal turnover or discharge shall as a condition of employment become members of the union. New employees shall be required to become members of the Union within fifteen days after employment. It is understood that the employer shall have the voluntary right to either call the union for new employees or hire anyone whom he desires the only factor being that a condition of employment of new employees shall be that they come into the union within fifteen days. It is also agreed that the union shall be the bargaining agent for both Union and non-union employees and that any wages, hours and working conditions established for Union employees shall be paid also to the non-union employees."

The respondent's answer to the Union's proposal was an action for injunction, claiming that he suffered damages through the picketing, and being placed on the "We do not patronize" list (Rec. 1; 26).

After the respondent had introduced his evidence, the trial court granted a motion for nonsuit, and dismissed the complaint (Rec. 11). Upon appeal, the State Supreme Court of Washington, with four dissents and one partial concurrence, reversed the trial court's decision (Rec. 12-25) saying that there was no proof of damages suffered by the placing of the respondent's name on the "We do not patronize" list, and basing its ruling solely upon the legality of the picketing involved. It stated that peaceful picketing, in the absence of a direct employer-employee relationship, was unlawful, since it was designed to coerce the employer to request his employees to join the Union.

In the same opinion, the Court expressly overruled two previous decisions rendered by it (*O'Neil* v. *Building Service Employees Int. Union, Local No. 6*, 9 Wash. 2d. 507, 115 P. 2d 662 (1941), and *S. and W. Fine Foods, Inc.* v. *Retail Delivery Drivers Union, Local No. 353*, 11 Wash. 2d 262, 118 P. 2d 962 (1941)), which had declared, in accordance with the case of *American Federation of Labor* v. *Swing*, 312 U. S. 321, that peaceful picketing, even in the absence of a direct employer-employee dispute, was protected by the right of freedom of speech, regardless of the common law of a state or the wording of a state anti-injunction act and its interpretation by the state courts, and that the judges of a state were under a duty to follow that decision, like any other decision of the United States Supreme Court interpreting the Federal Constitution.

After the remanding of the case to the trial court, the issues were tried again, and the trial court rendered judg-

ment in favor of the respondent, awarding him the amount of $500 on damages for the picketing, but did not allow him any recovery for the placing of his name on the "We do not patronize" list (Rec. 38-39; 172). Upon subsequent appeal of both parties to the State Supreme Court, the judgment of the trial court was affirmed, due to the lack of a majority for any one of the several views expressed by the judges of the State Supreme Court (Rec. 40).

Since the opinion and the final judgment of the State Supreme Court dealt only with the aspects of picketing, that issue alone may be examined.

It is the position of the petitioners that the constitutional question of the interrelation of peaceful picketing and freedom of speech as it appears in the present case, was settled by this Court in the cases of *American Federation of Labor* v. *Swing*, 312 U. S. 321, 61 S. Ct. 568, 85 L. Ed. 855 (1941); *Bakery and Pastry Drivers and Helpers Local 802 of I. B. T.* v. *Wohl*, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178 (1942), and *Cafeteria Employees Union, Local 302* v. *Angelos*, 320 U. S. 293, 64 S. Ct. 126, 88 L. Ed. 58 (1943), and that the judges of the State Court are bound to follow these decisions. In these cases it was said that the constitutional guarantee of freedom of discussion may not be infringed either by a statute or by the common law policy of a state forbidding resort to peaceful persuasion through picketing, merely because there was no immediate employer-employee dispute. Yet, this was precisely the thing done by the Supreme Court of the State of Washington in the instant case. It declared peaceful picketing unlawful, not because it was carried out "en masse", or was "enmeshed with violance" (*Milk Wagon Drivers' Union* v. *Meadowmoor Dairies*, 312 U. S. 287, 292, 297, 61 S. Ct. 552, 85 L. Ed. 481, 483), or was "an essential

and inseparable part of a grave offense against an important public law" providing criminal punishment for its violation (*Gibony* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 69 S. Ct. 684), or because the Court desired "to localize industrial conflict by prohibiting the exertion of concerted pressure directed at . . . [a] business, wholly outside the economic context of the real dispute" (*Carpenters & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722, 726, 62 S. Ct. 807, 86 L. Ed. 1143), but because the Court refused to recognize the constitutional right to communicate peaceably to the public the facts of a dispute in cases where the communication did not concern a dispute between an employer and those directly employed by him. This Court has repeatedly declared that it will not uphold such type of reasoning as a ground for disregarding the constitutional guarantee of free speech, particularly not in those cases where a state court has labeled picketing as coercive when this Court has found differently.

Errors Relied Upon.

The Supreme Court of the State of Washington erred in disregarding the constitutional guarantee of free speech by announcing that this guarantee was lost if the peaceful picketing was carried out by workmen who were not directly employed by the picketed employer. It erred in disregarding the decisions of this Court which have settled that problem. It erred in overruling its own prior decisions which had determined the problem in accordance with the decisions of this Court and had recognized the duty of the state judges to follow the decisions of this Court in all questions involving the Federal Constitution.

It erred in overruling its prior decisions and thus declar-

ing conduct unlawful which was lawful at the time it was engaged in.

It erred in declaring peaceful picketing coercive, merely because it might induce the picketed employer to take action in favor of the union.

It also erred in holding the picketing coercive, since it was carried out only intermittedly and irregularly and then only by one picket, therefore obviously only for the purpose to inform the public of the existence of a labor dispute. It erred in holding the conduct of the Union coercive, stating that it was designed to force the employer to have his employees join the Union, since that statement was without foundation after the Union had abandoned its demand that regular employees then working for the hotel should be required to join the Union.

Summary of Argument.

This Court has determined that no coercion or force is indicated by facts such as are here established, and that the peaceful picketing such as is here involved is within the guarantee of freedom of speech under the Fourteenth Amendment to the United States Constitution. This Court has also determined that freedom of speech under the Fourteenth Amendment is protected against infringement by state action, regardless of whether such action is based upon state legislation or state judicial construction of principles of common law.

ARGUMENT.

I.

The attempted organization of employees by a union is a lawful labor objective.

The opinion of the Washington State Supreme Court rests upon the basis that a labor union may not engage in peaceful picketing in order to attempt the organization of an employer's workers, if none of these workers is a member of the union or has expressed any desire to join the union, and that peaceful picketing in such a situation is coercive, its purpose being to compel the employer to request his men to join the union.

In making that determination, the State Supreme Court declared that such a conduct was in violation of the Washington Labor Disputes Act (Rem. Rev. Stat. (Sup.) 7612-2) and of the common law as announced in previous decisions of the courts of the State of Washington. Both contentions are incorrect. The cases of *O'Neil* v. *Building Service Employees International Union, Local No. 6,* 9 Wash. 2d, 507, 115 P. 2d 662, 137 A. L. R. 1102 (1941), and *S and W Fine Foods, Inc.* v. *Retail Delivery Drivers and Salesmen's Union, Local 353,* 11 Wash. 2d 262, 118 P. 2d 962 (1941) recognized the organization of workers in cases where no direct employer-employee relationship existed, as a lawful labor objective for the State of Washington and established that peaceful picketing employed to achieve that purpose was protected by the right of freedom of speech. The State Supreme Court has now ignored the fundamental question of freedom of speech involved in these picketing

situations and the protection which must be accorded to that right. It also has ignored the fact that the Union, after having originally asked that all employees should become Union members, modified this demand and requested that only new employees hired in the natural course of business should join the Union (Rec. 14). Thus, the Court's statement that the purpose of the picketing was to compel the employer to request his existing employees to join the Union, was without any basis.

Already at a comparatively early stage in the development of the law of labor relations in this country, it was recognized by this Court and the highest courts of many states that workmen have a right to enlarge the membership of their union by attempting to bring all those within the fold of their organization who are engaged in the same type of work in the community. This recognition was based upon the economic principle that the working conditions of wage earners engaged in a trade vitally affect the wage and living standards of union men performing the same type of work in the same locality. This principle found its best expression in the following words of Chief Justice Taft in *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209, 42 S. Ct. 72, 66 L. Ed. 189, 200, 27 A. L. R. 300 (1921):

> "To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers, they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild. It is impossible to hold such persuasion and propaganda without more, to be without excuse and malicious."

Thus, this Court stated clearly and precisely that it was a legitimate objective of unions to organize all those who compete by their labor with union men, or work in the same trade or industry in the same locality.

The right of employees to organize was reiterated by this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33, 57 S. Ct. 615, 81 L. Ed. 893, 909, 108 A. L. R. 1352 (1937). In that case, Chief Justice Hughes said with respect to the self-organization of employees:

> "That is a fundamental right. . . . Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209, 42 S. Ct. 72, 78, 66 L. Ed. 189, 27 A. L. R. 360."

Chief Judge Cardozo expressed the same thoughts in *Nann* v. *Raimist*, 255 N. Y. 307, 174 N. E. 690, 73 A. L. R. 669, 674:

> "If the defendant [union] believes in good faith that the policy pursued by the plaintiff and by the shops united with the plaintiff is hostile to the interests of organized labor, and is likely, if not suppressed, to lower the standards of living for workers in the trade, it has the privilege by the pressure of notoriety and persuasion to bring its own policy to triumph. *Exchange Bakery and Restaurant* v. *Rifkin*, *supra*; *Bossert* v. *Dhuy*, 221 N. Y. 342, 117 N. E. 582, Am. Cas. 1918D 661."

Thus, the law recognized the attempt of unions to enlarge their membership by peaceful means, as a legitimate labor objective.

II.

The Washington State Supreme Court bases its opinion upon the alleged unlawfulness of peaceful picketing in the absence of a direct employer-employee relationship, and upon no other ground.

The Union tried to accomplish the lawful labor objective of enlarging its membership by peaceful picketing. This is recognized by the State Supreme Court in its opinion which dealt only with the aspects of picketing involved in the case and did not take into consideration other means employed by the Union. This is also apparent from the final judgment of the State Supreme Court in this case, which, in affirming the trial court's decision, allowed damages only for the picketing which took place and for no other Union conduct (Rec. 40). Since the State Supreme Court based its ruling solely upon the asserted illegality of the picketing employed, the case must be viewed and determined only from that angle.

The term "peaceful picketing" employed by the State Court "implies not only absence of violence, but absence of any unlawful act". (*Senn* v. *Tile Layers Protective Union, Local No. 5*, 301 U. S. 468, 479, 57 S. Ct. 857, 81 L. Ed. 1229, 1236.) Yet, although the picketing was peaceful, the State Supreme Court adopted the opinion that it was unlawful. It reached that conclusion by referring, in the main, to decisions that were rendered under the Washington Labor Disputes Act and other so-called state anti-injunction acts, which were interpreted by the state courts

to exclude from the protection of the Act picketing other than that of the immediate employees against their employer. The State Court discretely relied upon its decisions and decisions of states which *were reached before February 10, 1941*; the day on which this Court rendered its decision in *American Federation of Labor* v. *Swing*, 312 U. S. 321, 61 S. Ct. 568, 85 L. Ed. 855, which declared that, regardless of the phraseology of a state anti-injunction act and its interpretation by a state court, the constitutional guaranty of freedom of speech protected peaceful picketing even in those cases where there was no immediate employer-employee relationship. To reach the desired result, the State Supreme Court not only ignored the *Swing* case but was forced to overrule expressly *O'Neil* v. *Building Service Employees International Union, Local No. 6*, 9 Wash. 2d 507, 115 P. 2d 662, 137 A. L. R. 1102 (1941), and *S and W Fine Foods, Inc.* v. *Retail Delivery Drivers and Salesmen's Union, Local No. 353*, 11 Wash. 2d 262, 118 P. 2d 962 (1941). These cases were decided after the decision in the *Swing* case and recognized that peaceful picketing as a means of communication was protected by the Fourteenth Amendment to the United States Constitution not only in cases where there was a direct employer-employee relationship but also in cases where no such relationship prevailed, that the final authority to pass upon the legality of such conduct, which involved a federal constitutional right, was vested in the United States Supreme Court, and that state courts had to decide such cases in accordance with the views expressed by the United States Supreme Court and not in accordance with their own interpretation of the respective anti-injunction acts. Thus, it is obvious that the opinion of the State Supreme Court in the present case is based solely upon the alleged unlawfulness of the picketing involved and not upon any other conduct of the Union. This

is also borne out by the previously mentioned fact that the final judgment of the State Supreme Court in this case allowed damages only for the peaceful picketing in which the Union engaged and not for any other activities.

III.

Peaceful picketing is protected by the right of freedom of speech, notwithstanding the absence of a direct employer-employee relationship.

"Peaceful picketing is the workingman's means of communication." (*Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U. S. 287, 293, 61 S. Ct. 552, 85 L. Ed. 836, 132 A.L.R. 1200.) As such "members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution." (*Senn* v. *Tile Layers Protective Union Local No. 5*, 301 U. S. 468, 478, 57 S. Ct. 857, 81 L. Ed. 1229, 1236).

Since the decision by this Court in *Thornhill* v. *State of Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 (1940), it has been established that a state may not indiscriminately ban "the dissemination of information concerning the facts of a labor dispute", whether that information is conveyed through advertisements, circulars, speech, or banners carried by picketing workingmen. As a logical consequence of the interrelation between peaceful picketing and freedom of speech it was determined by this Court in 1941, that "a state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those

directly employed by him." (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 326, 61 S. Ct. 568, 85 L. Ed. 855, 857.)

In the *Swing* case, which originated in the State of Illinois, the facts were almost identical with that in the present case. As stated by the Illinois Supreme Court in *Swing* v. *American Federation of Labor*, 372 Ill. 91, 22 N. E. 2d 857, Swing was the owner of a beauty parlor in Chicago. One morning, four officials of the Hairdressers Union "called upon Swing and demanded that he require all of his employees to join that union to which none of them belonged, and to which none of them wished to belong. Swing, took a neutral position in the matter, permitted the agents to mingle with his employees, and permitted the employees to do as they pleased." There was no dispute between Swing and his employees, who were satisfied with wages, hours and working conditions. When the employees declined to join the union, the union members began to picket Swing's beauty parlor. Swing and his employees thereupon filed suit against the union, asking that the picketing be enjoined. The Illinois Supreme Court adopted the same view as that adopted by the Illinois Appellate Court, answering in the negative the following question stated by the Appellate Court:

> "The question presented for determination is whether a labor union, in which none of its members are present, past or expectant employees of an employer, has a right to picket his place of business, *for the purpose of compelling the employees, who do not wish to join a union, to do so.*" (Emphasis supplied.)

This Court reversed the decision of the Illinois Supreme Court. It declared that it was asked "to sustain a decree which * * * asserts as the common law of a state that there can be no peaceful picketing or peaceful persuasion in re-

lation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him." This Court proceeded as follows (312 U. S. 325, 326):

> "Such a ban of free communication is inconsistent with the guarantee of freedom of speech. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. *The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.* The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Foundries* v. *Tri-City Council*, 257 U. S. 184, 209, 42 S. Ct. 72, 78, 66 L. Ed. 189, 27 A.L.R. 360. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's case." (Emphasis supplied.)

In comparing the *Swing* case with the one under consideration, the similarity between the two is striking. Here as there, a union attempted to organize the employees of a business enterprise who were not desirous to join the union. Here as there, the employer granted to the union officials opportunity to talk to the employees so that they might be

persuaded to join the union. Here as there, the employer declined in the end to recognize the union as collective bargaining representative and was picketed by the union. Here as there, the peaceful picketing was declared to be coercive by the state courts and a judgment was rendered against the union. It is respectfully submitted that, due to the striking similarity in facts, here as there, the same decision should be reached by this Court, reversing the state court's decision as being an infringement upon the right of freedom of speech and, therefore, in violation of the Fourteenth Amendment to the Constitution of the United States.

In this connection, however, attention may be called to the fact that the coercion alleged by the Supreme Court of Illinois in the *Swing* case was greater than that alleged by the Supreme Court of Washington in the present case. The picketing in the *Swing* case related to all employees who were not members of the union. Picketing in the present case related only to new employees, after the proposal which is quoted at page 14 of this brief.

IV.

The State Court's opinion imposes an indiscriminate restriction upon free discussion of matters affecting the public interest.

As mentioned previously, the opinion of the Supreme Court of the State of Washington in the present case demonstrates that the peaceful picketing in question was deemed coercive and, therefore, unlawful, only because it was carried out by a union which had no members among the employees sought to be organized. That this was the basis of the opinion is evidenced by the language adopted

by the Court from the decisions in *Safeway Stores, Inc.* v. *Retail Clerks' Union Local No. 148*, 184 Wash. 322, 51 P. 2d 372, and *Roth* v. *Local Union No. 1460 of Retail Clerks Union*, 216 Ind. 363, 24 N. E. 2d 280, both of which decisions were rendered before 1940, and both of which, without even mentioning the right of freedom of speech, held picketing coercive if there was no direct employer-employee relationship involved. But this view of the State Supreme Court in this case is also indicated by the fact that the Court expressly overruled the cases of *O'Neil* v. *Building Service Employees Int. Union, Local No. 6*, 9 Wash. 2d 507, 115 P. 2d 662, 137 A.L.R. 1102 (1941), and *S and W Fine Foods, Inc.* v. *Retail Delivery Drivers and Salemen's Union, Local No. 353*, 11 Wash. 2d 262, 118 P. 2d 962 (1941), which involved peaceful picketing in situations where no employer-employee relationship existed between the disputants, and where injunctive relief was denied for the reason that the right of peaceful picketing was guaranteed by the right of freedom of speech embodied in the Fourteenth Amendment to the United States Constitution. Thus, the Supreme Court of the State of Washington has in the present case altered its position and readopted the view that it does not permit peaceful picketing in the absence of a direct employer-employee relationship, and deems such picketing unlawful.

A state may not ban free discussion and persuasion under the guise of averred unlawfulness. Yet, this is the very thing which the Supreme Court of the State of Washington attempts to do in the present case, and which the State of Illinois attempted to do in the *Swing* case. It declared certain labor conduct and the objectives to be attained thereby, to be unlawful, simply because such conduct proved annoying to the individual employer involved, and it used the alleged unlawfulness of the labor objective as a device to

ban all persuasion and free discussion regarding the underlying facts which are of vital concern to the public. But, "it does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern. A contrary conclusion could be used to support abridgment of freedom of speech and of the press concerning almost every matter of importance to society". (*Thornhill* v. *State of Alabama*, 310 U. S. 88, 104, 60 S. Ct. 736, 84 L. Ed. 1093, 1103.)

Freedom of speech must be guarded with a jealous eye (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 325), and a generous scope must be given to its guarantee. (See *Milk Wagon Driver's Union of Chicago* v. *Meadowmoor Dairies*, 312 U. S. 287, 296, 61 S. Ct. 552, 85 L. Ed. 838, 842.) "Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every form of freedom." (Mr. Justice Cardozo in *Palko* v. *Connecticut*, 302 U. S. 319, 327, 58 S. Ct. 149, 152, 82 L. Ed. 288.) Hence, this all-important freedom may not "be defeated by insubstantial findings of fact screening reality." (*Milk Wagon Driver's Union of Chicago* v. *Meadowmoor Dairies*, 312 U. S. 287, 293, 61 S. Ct. 552, 85 L. Ed. 836, 841.) However, that was done by the Supreme Court of the State of Washington in the present case. It labeled the peaceful picketing as coercive, not because of any threat, force or intimidation used, but simply because of the absence of a direct employer-employee relationship. The Court made it clear in its opinion—by its statements and by the fact that it expressly overruled those cases which held peaceful picketing lawful regardless of the existence of a direct employer-employee relationship—that whatever the facts might be in an individual case, and however peacefully a union might proceed—in the absence of a direct employer-

employee relationship, the Supreme Court of the State of Washington would deem as coercive any kind of picketing, peaceful or not peaceful. That such an indiscriminate proscription of the right to persuade others and to advertise the facts of a labor dispute violates the guarantee of freedom of speech is evident. This ban on free discussion and persuasion being so broad as to make the exercise of this right impossible in certain situations, generally and vaguely defined, was the evil which this Court struck down in the *Thornhill, Carlson, Swing and Wohl* cases. And this is the evil which is attacked in the instant case. Here, "we are * * * not concerned with picketing en masse or otherwise conducted which might occasion such imminent and aggravated danger * * * as to justify a statute narrowly drawn to cover the precise situation giving rise to the danger". (*Thornhill* v. *State of Alabama,* 310 U. S. 88, 105.) Here we are not concerned, as in the *Meadowmoor* case (312 U. S., p. 292) with picketing "enmeshed with contemporaneously violent conduct," and not, as in the *Giboney* (336 U. S. 490) case with picketing as a means to commit a criminal act in violation of a penal statute; here, we are confronted with a decision which declares as the common law of the State of Washington, that whenever and wherever picketing is conducted by persons other than those directly employed by the employer, it is unlawful—regardless of "the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, * * * the restrained character and the accurateness of the terminology in notifying the public of the facts of the dispute." (*Thornhill* v. *State of Alabama,* 310 U. S. 88, 99.) What we are here dealing with is not a decision narrowly restricting picketing to prevent a supposed evil, but a judgment "based on a common law concept of the most general and undefined nature." (*Cantwell v. Connecticut,*

310 U. S. 296, 308, 60 S. Ct. 900, 84 L. Ed. 1213, 1220, 128 A.L.R. 1352 (1940).)

Hence, it is this broad, general and indiscriminate ban on free communication regarding facts of public interest which is assailed here, and not the power of a state to restrain, even peaceful picketing, in certain narrowly defined situations. A state may not draw the limits of freedom of speech so narrow as to exclude a substantial portion of matters affecting the public interest from the area of free discussion and persuasion. Yet, this was done by the Washington State Supreme Court in the present case. In doing this, the Court centered all its attention upon the supposed coercive effect the picketing might have had upon the employer.

It ignored in this connection the fact that only nine employees out of a total of approximately fifteen had declined to join the Union, and that this refusal was expressed only in a meeting which was presided over by the manager of the hotel, and in which the vote on the issue was proposed and taken also by the manager. The State Supreme Court also ignored the nature of the picketing involved, above all the fact that the picketing was carried out by but one picket only and then merely intermittently and at irregular intervals. A consideration of that type of picketing can lead to only one reasonable conclusion—that the picketing was designed and intended solely for the purpose of informing the public regarding the facts of the existing labor dispute, and for no other purpose. Thus, the Supreme Court of the State of Washington failed to consider and to evaluate the real and most important aspect of picketing—the advertising of a dispute and the attempt on the part of the picketing union to persuade the public to agree with it. It neglected to take into consideration the fundamental basis of

the legality of peaceful picketing, upon which the whole theory of the interrelation of picketing and speech is founded—the supplying of information to the public regarding the facts of a labor dispute, and the appeal to the public. It is by this appeal to the public that the union competes with non-union concerns. "Earning a living is dependent upon securing work; and securing work is dependent upon public favor." (*Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 482, 57 S. Ct. 857, 81 L. Ed. 1229, 1238.) A state cannot outlaw peaceful picketing and, thereby, shut off a union from its right to compete with employers to win public favor for the purpose of securing work for its members, simply because it determines that under its state law no labor dispute is or may be in existence which would allow publication of the facts of such a dispute. "One need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive." (*Bakery & Pastry Drivers and Helpers Local 803 of I. B. T.* v. *Wohl*, 315 U. S. 769, 774, 62 S. Ct. 816, 86 L. Ed. 1178, 1183.) Here as in the *Wohl* case, the state court reasoned that the right to appeal to the public by means of peaceful picketing was lost by the union and that the picketing was coercive because no "labor dispute" existed under the state law, if there were absence of a direct employer-employee relationship. In the *Wohl* case, this Court demonstrated the fallacy of that notion by pointing to the guarantee of free speech which protected the conduct of the workmen.

The protection of freedom of speech finds basis in the Fourteenth Amendment and not in a state statute. The right of freedom of speech does not depend upon "the notion of a particular state regarding the wise limits of an

injunction in an industrial dispute." (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 326.) It does not depend upon an employer-employee relationship.

That the conduct of the Union might have caused some injury to the employer in the present case is not sufficient to deem it coercive. The fact that the picketing affected the employer's business does not make it unlawful. Peaceful picketing like any other mode of speech is designed to influence other persons in their thinking and to induce them to take action in favor of the pleader and in disfavor of the person against whom the speech is directed. If injury results to the person against whom the speech is directed, the damage is an incident to the right of freedom of speech. If such incidental injury were to be taken as a criterion, whether speech is lawful or unlawful, there would hardly be any possibility for exercising that right at all. "The right to form opinion is of little value if such opinion may not be expressed, and the right to express it is of little value if it may not be communicated to those immediately concerned." (*National Labor Relations Board* v. *Ford Motor Co.*, 114 F. 2d 905, 913, *cert. denied* 312 U. S. 689, 61 S. Ct. 621, 85 L. Ed. 1126 (1941).) "It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interests merely on a showing that others may thereby be persuaded to take action inconsistent with its interest." (*Thornhill* v. *State of Alabama*, 310 U. S. 88, 104, 60 S. Ct. 736, 84 L. Ed. 1093,

1103.) Thus, the fact that the activities of a union may be injurious to the employer does not render them unlawful and may not be used by a state to label them as coercive and to use that as a pretext to outlaw them. Yet, this was the way in which the Supreme Court of the State of Washington proceeded in the instant case.

V.

No coercion was exercised upon the employer.

The State Supreme Court—in order to declare the picketing unlawful—labeled it coercive, stating that it was designed to compel the employer to request his men to join the Union. That this declaration was an "insubstantial finding of fact screening reality" (*Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U. S. 287, 292.), is best evidenced by the Court's own statement of facts in its opinion, where it expressly relates that the Union, shortly after June 22, 1946, abandoned its previous proposal and requested the employer to sign a contract under which "the regular employees now working at the hotel shall *not* as a condition of continued employment be required to become members of the union" and that only "new employees who are hired to replace regular employees who have left through normal turnover or discharge shall as a condition of employment become members of the union." This request of the Union is quoted in full by the Court in its opinion, and is set forth in full at page 14 of this brief. Thus, the statement of the Court that the picketing was intended to force the employer to compel his men to join the Union is actually without any foundation, since the picketing continued until July 20, 1946, and no evidence, let alone any finding by the Court, is on record,

that new employees were hired during that time or, if hired, did not wish to become Union members. Hence, the whole theory of the coercion of employees breaks down and cannot be maintained. This becomes even more plausible if the type of picketing is recalled which was employed by the union and which was clearly designed only to inform the public of the facts of a labor dispute. Keeping in mind that factual situation, the conclusion seems obvious that the State Court's determination of coercion was without warrant and, amounted to "a palpable evasion of the constitutional guarantee here invoked." (*Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U. S. 287, 294.) This corroborates the statement previously made in this brief, that the only ground upon which the State Court based its decision that the peaceful picketing involved in this case was unlawful, was the absence of a direct employer-employee relationship. That fact brings the case squarely under the doctrine of the *Swing* case and, therefore, calls for the same final result as was reached by this Court in the *Swing* case.

Once more it should be emphasized in this connection that the intermittent and irregular character of the peaceful picketing involved clearly demonstrates the Union's intent only to reach the public. This was expressly found by the trial judge, on the second trial of the case, when he declared as to the patrons of the hotel, that "they didn't want to be noticed patronizing a place being picketed" (Rec. 172). Thus, there was in this case peaceful picketing alone, with the single intent of notifying the public that the hotel was operating on a non-union basis. The picketing, therefore, was within the principle of freedom of speech established by this Court as protected by the Constitution of the United States.

VI.

The State statute involved gives no weight to the decision of the State Supreme Court.

The Supreme Court of the State of Washington quotes in its opinion (Rec. 15) the declaration of policy of the Washington Labor Disputes Act (Chapter 7, Laws of 1933, Ex. Sess. Rem. Rev. Stat. (Sup.) § 7612-2), which is identical with the Norris La Guardia Act and reads as follows:

> "Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; * * *."

At the end of its opinion, the State Supreme Court says (Rec. 24):

> "We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.) § 7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved."

From these words it can be seen that the State Supreme Court reached its conclusion that picketing, in the absence

of a direct employer-employee relationship, is coercive, not only by referring to the common law of the State of Washington, but also by pointing to the public policy declaration of the Washington Labor Disputes Act. Since, however, according to the State Supreme Court's opinion, the public policy statement of the Labor Disputes Act is declaratory of the common law of the State of Washington, the issues are the same under the common law policy of the State and under the State statute—namely, whether a state may, either by legislative enactment, or by court decision, prohibit peaceful picketing, merely because it is carried out by workmen who are not directly employed by the picketed employer.

This Court has treated both situations alike, by declaring that "the scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, *whether those limits be defined by statute or by the judicial organ of the state.* A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him." [Emphasis supplied.] (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 326, 61 S. Ct. 568, 85 L. Ed. 855 [1941].)

Conclusion.

The Supreme Court of the State of Washington has barred resort of workers to peaceful persuasion through picketing in all cases where the disputants do not stand to each other in a direct employer-employee relationship. Such indiscriminate ban on free communication regarding

the facts of a dispute deprives a substantial number of citizens of their right to submit their side of a grievance to the public, to win favor in the public eye for their stand and, by winning public favor, to secure work and the means of livelihood for their group. This Court has held in the *Swing, Wohl* and *Angelos* cases, that the constitutional guarantee of freedom of speech protects the right of workers to state their case and to appeal through peaceful picketing for public support, regardless of the area of immunity defined by state policy. This Court has also held that insubstantial findings of fact by a state court in such situations, will not be allowed to be used as a means to take away that constitutional guarantee.

It is respectfully asked that this Court reaffirm its previous opinions in these matters, especially in view of the fact that certain doubts have arisen within the last two years regarding the constitutional guarantee of free speech in its relation to the legality or illegality of peaceful picketing as defined by the policy of a state.

Respectfully submitted,

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